

**REMARKS/ARGUMENT**

**Description of Amendments**

Claims 28, 29, 31, 32, 41-49, and 50-52 are pending. Claims 28, 31 and 44 are amended and Claims 50-53 are new.

Support for the amendments to the claims may be found at paragraphs [0006], [0028], [0016], and [0049] of U.S. Pub. No. 2004/0186553.

**Rejection under 35 U.S.C. §§ 102, 103**

Claims 31, 32, 43 and 44 stand rejected under 35 USC 102(b) as being anticipated by *Cosentino* (US4405319). Claims 28, 29, 41 and 45-49 stand rejected under 35 USC 103(a) as unpatentable over *Cosentino* in view of *MacGregor* (US4458366).

Applicants respectfully traverse this rejection for the following reasons.

*Cosentino* is focused on aspects of an implantable blood access device, one of them being a porous surface of this device. In the description of the matte finish aspect of the disclosure, the reference makes exclusive reference to what it calls a “T-shaped structure in which the stem of the T is constructed and arranged to cooperate with a novel needle structure that penetrates a septum seal. Col. 1, ll. 20-31. In the detailed description, this structure is further described as having a portion that is located outside of the skin. Col. 2, ll. 16-36.

*MacGregor* is directed to an implantable artificial blood pump. As discussed in connection with FIG. 1 of this reference, the structures described under *MacGregor* includes such features as a part-spherical, rigid housing 12, a one-way valve 22, and a diaphragm 16. col. 2, ll. 4-56.

Claims 28, 31, and 44 are the independent claims in this case. Each of these claims are limited to a stent structure. Yet, the Official Action has concluded in summary fashion that a T-shaped blood assist structure is a “stent”. Indeed, the Official Action actually appears to have concluded that the structure described in *Cosentino* is a stent without even explaining how such a device could possibly be construed as a stent in view of Applicants’ disclosure. Even under the

broad claim interpretation standard afforded to patent examiners, the Office's construction of "stent" as covering the structure described in the cited references is unreasonable.

Although not necessary, Claims 28, 31 and 44 are amended to recite "wherein the stent is configured for being radially expanded by a balloon and for providing support to a body vessel after the stent has been radially expanded by the balloon".

Anticipation under 35 U.S.C. § 102 requires that each limitation of a claim is found in a single reference either expressly or inherently. *See Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 77 USPQ2D 1321 (Fed. Cir. 2005). Claims 31, 32, 43 and 44 are not anticipated by *Cosentino* because *Cosentino* nowhere teaches or suggests a stent having the features set forth in Claim 28, including configured for being radially expanded by a balloon and for providing support to a body vessel after the stent has been radially expanded by the balloon. Withdrawal of the rejection under 35 U.S.C. § 102(a) is earnestly solicited for these reasons.

As for the rejections under Section 103, the Office does not make a *prima facie* case of obviousness if the combined art does not at least teach all of the features in a claim. Claims 28, 29, 41 and 45-49 are all directed to a stent that has the capability of being radially expanded by a balloon and to provide support to a body vessel after the stent has been radially expanded by the balloon. Neither *Cosentino* nor *MacGregor* disclose a stent structure having all of the features set forth in these claims, at least because neither of these references disclose a stent that has the capability of being radially expanded by a balloon and to provide support to a body vessel after the stent has been radially expanded by the balloon. Withdrawal of the rejection under 35 U.S.C. § 103(a) is earnestly solicited for these reasons.

For at least the above reasons, Applicants respectfully ask that all standing rejections of Claims 28, 29, 31, 32 and 41-49 under 35 U.S.C. §§ 102, 103 be withdrawn and these claims allowed. Allowance of Claims 50-53 is also requested, at least because they depend from allowable claims.

Application No. 10/767,296  
Amendment dated August 6, 2008  
Reply to Office action of June 5, 2008

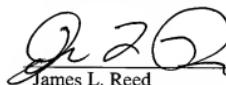
**Conclusion**

In light of the foregoing remarks, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested. If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 07-1850.

Respectfully submitted,

Date: August 6, 2008

Squire, Sanders & Dempsey L.L.P.  
One Maritime Plaza  
Suite 300  
San Francisco, CA 94111  
Facsimile (415) 393-9887  
Telephone (415) 954-0315



James L. Reed  
Attorney for Applicants  
Reg. No. 43,877